



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/166579

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 12, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on July 21, 2015, at Waukesha, Wisconsin. The exhibits were sent to Petitioner but she did not recall seeing them, they were to be sent to her again after the hearing and she was told that she could call the undersigned after reviewing them if she needed to have this hearing rescheduled to address issues she noted. No call was received.

The issue for determination is whether Petitioner's appeal is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kathy Jones

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. Petitioner was sent two Notification of FoodShare Overissuance notices, both dated October 12, 2012. Both were sent to the correct address at the time. One was manually generated and the other computer generated.
3. The overpayment notices informed Petitioner that she had been overissued FoodShare benefits totaling \$1311.00 during the period of January 1, 2012 through July 2012.
4. The reason for the overissuance was that Petitioner had not reported income on a December 2011 six month report form.
5. The computer generated overpayment notice did contain appeal instructions that informed Petitioner that an appeal had to be filed within 90 days of the date of the notice.
6. A repayment agreement and dunning notices were also sent to Petitioner at the correct address at the time of mailing.
7. Petitioner filed this appeal on June 12, 2015.

### **DISCUSSION**

The Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook (FSH), §6.4.1 and 7 CFR §273.15(g)*. Thus the Division of Hearings and Appeals, by law, lost authority to make a decision here after the appeal deadline passed so I must conclude that the Division of Hearings and Appeals does not have authority to make a determination on the merits of this matter as Petitioner did not timely file her appeal.

### **CONCLUSIONS OF LAW**

That the Division of Hearings and Appeals does not have authority to make a determination on the merits of this matter as Petitioner's appeal is not timely.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 10th day of August, 2015

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on August 10, 2015.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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